Supreme Court, U.S.
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82-1119

No. _____

In The

Supreme Court of the United States

October Term, 1983

SUSIE L. WILLIS

Petitioner

VS.

Clyde Muse, President of Hinds Junior College, T.H. Kendall III, Sharp W. Banks, Jr., William M. Moss, Walter R. Bivins, Donald S. Oakes, E.A. Porter Joseph T. Travillion, Jr., Michael B. Vinson, Ellis W. Wright, Jr. and George E. Wynne, Members of the Board of Trustees of Hinds Junior College,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

(1) Whether Petitioner Had Property Or Liberty Interest In Her Employment Which Would Entitle Her To Procedural Due Process Protection Under the Fifth and Fourteenth Amendments To The United States Constitution.

(2) Whether Respondents' Requirement That Petitioner Submit To Their "Individual Plan Of Improvement" As A Prerequisite To Continued Employment Violated Petitioner's Rights Secured By The First Amendment To The United States Constitution.

PARTIES TO THIS PROCEEDING IN THE COURT OF APPEALS

Plaintiff-Petitioner

Susie L. Willis

Defendants-Respondents

Clyde Muse
T.H. Kendall III
Sharp W. Banks, Jr.
William M. Moss
Walter R. Bivins
Donald S. Oakes
E.A. Porter
Joseph T. Travillion, Jr.
Michael B. Vinson
Ellis W. Wright, Jr.
George E. Wynne

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IN THE

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above entitled cause on October 4, 1982.

PRIOR OPINION

The unreported opinion of the United States District Court Judge, Honorable Harold Cox, denying Petitioner's Bill of Complaint for a permanent injunction to require Respondents to offer Petitioner a non-probationary contract for the school years 1980-81 and 1981-82 appears in Appendix C, *infra*. The unreported opinion of the Fifth Circuit Court of Appeals appears herein in Appendix D, *infra*.

JURISDICTION

The judgment of the Fifth Circuit Court of Appeals was entered on October 4, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1259(1).

STATUTES INVOLVED

The federal statutes involved are 42 U.S.C. Section 1983 and 1985, as are the First, fifth and Fourteenth Amendments to the United States Constitution.

Mississippi Code Sections 37-29-63, 1972 Annotated. Pertinent statutory provisions are set forth in Appendix A.

STATEMENT OF THE CASE

This is a lawsuit by a Black Socology instructor at Respondent Hinds Junior College whose contract for employment was not renewed for the 1981-82 school year, and whose contract for the 1980-81 school year required her to submit to the terms of an "Individual Plan of Improvement."[1]

---

[1] May 12, 1980 ATTACHMENT B

This conference is to establish specific goals that Mrs. Susie Willis must achieve in order to be removed from probationary employment status or for consideration of renewal of contract at Hinds Junior College.

/continued ...

Footnote [1] continued/ ...

Your probationary status for 1980-81, offered in the letter of May 2, 1980, from Dr. Clyde Muse, President, is the result of your overall performance for the past 4 years. More specifically the following 2 main points necessitate action by administration:

1. Col. Frank Walsh, Mrs. Anne Hardy, Dr. Mike Rabalais, and Dr. Clyde Muse have all had telephone calls complaining about your performance as an instructor.
2. The letter of December 11th addressed to the Board of Directors of Hinds Junior College and signed by 16 students cannot be ignored.

You must show improvement in the major areas listed below before you will be recommended for removal from your probationary status or for consideration of renewal of contract. Your performance improvement will be discussed with you on October 20, 1980, December 15, 1980, and March 16, 1981.

NEEDS IMPROVEMENT	ACTION	RESOURCES	EVALUATION
Student-instructor relationship	A. Allow students freedom of expression in the classroom B. Refrain from humiliating students when they disagree with your opinions C. Be open to questioning from students	Take a Teacher Effectiveness Training course	Absence of complaints to Department Chairman, Division Chairman, Academic Dean, Vice President for Instructional and Community Affairs, and President - Feedback will be given at Oct. 20, 1980, December 15, 1980, and March 16, 1981 conferences

/continued ...

Footnote [1] continued/ ...

Treat students as adults	A. Do not "Talk down to students" - for example, "reading text after they have been assigned to read it" and spelling common words such as "of" and "for" to them B. Refrain from having students reciting definitions in group rounds C. Avoid reprimanding students in presence of others	Cohen, Arthur & Florence Brawer. *Confronting Identity: The Community College Instructor*	Absence of student complaints to administrative personnel
Course time management as stated in point #4 of letter of December 11, 1979, addressed to Board of Directors and signed by 16 students - "Three class periods were spent on one chapter, but no expansion of material or continuation of a chapter from	A. More evenly spaced coverage of course material	Prepare a schedule for covering material	Conference with Department and Division Chairman week of October 6, 1980

/continued ...

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week to week — the whole chapter was covered one week, then the same coverage verbatum [sic] the next week, and (one can only presume that from lack of memory) the very same coverage the next week, starting at the beginning of the chapter again. Up to the three class periods before final examination, we covered seven chapters of a 23-chapter book and in those final three class periods before final exam, the remaining 16 chapters were dumped on the class."			
Scores on the student evaluation of instruction form	A. Follow the above recommendations	Yourself	Fall 1980 student evaluation of instruction; interpretation at December 15, 1980 conference with Department Chairman, Division Chairman, and Academic Dean.

continued/ ...

Petitioner brought this suit against respondents, President of Hinds Junior College and its Board of Trustees, in the United States Court for the Southern District of Mississippi, pursuant to the First, Fifth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. Section 1983 and 1985.

Petitioner alleged in her suit that Respondents did not afford her due process in the administrative hearings held before its hearing officers and the Board of Trustees, and that the Proposed "Individual Plan of Improvement" infringed upon her rights secured by the First Amendment to the United States Constitution.

At the trial, it was shown that a December 11, 1979 letter[2] from fifteen (15) students in Petitioner's sociology class to the re-

---

Footnote [1] continued/ ...

I have read and understand the terms of my probationary status.

Susie L. Willis

We have participated in this conference on May 12, 1980

Signed by Frank Walsh

Frank Walsh

Signed by Anne Hardy

Anne Hardy

Signed by Mike Rabalais

Mike Rabalais

---

[2]

December 11, 1979

Board of Directors
Hinds Junior College
Raymond, Mississippi

Deposition
Exhibit No.
P-1
Dr. Muse

continued/ ...

Footnote [2] continued/ ...

Dear Members of the Board:

We the undersigned are submitting this letter based on a concern for the standards of education and the method in which this particular course is being instructed.

As students in the course, Sociology 2113, under the instruction of Ms. Willis, we have been subjected to the following:

1. A form of instruction aimed at a classroom equivelant to no higher than a lower elementary level.

   a. Reciting definitions in group rounds.

   b. Having the teacher actually spell out words like "for" and "of" as we're taking notes.

   c. Having the teacher read to us from the text after we had already been assigned to read that text on our own, rather than using class time to expand on text material.

2. A discouraging of freedom of expression and questioning by Ms. Willis' manner in responding to questions. If Ms. Willis feels the question or thought expressed disagrees with or challenges what she has said, or if the question cannot be answered directly from the book, or if Ms. Willis does not understand the questions, she becomes defensive and simply ends the matter with statements such as:

   a. It is so because I say it is so, and I have been teaching sociology (or history, or English) a long time.

   b. Do you think you know more than I do?

We feel this is bringing the class to a subjective level and is not conducive to open discussion, questioning, and expansion of thought processes.

3. An atmosphere of intense bias and negativism. It appears that Ms. Willis allows her personal feelings to permeate the material presented, with a particular negative emphasis placed on the masculine gender and a propensity for using the United States as a poor example of whatever social problem is being presented. For expediency's sake, examples of these traits are not expounded upon, but can be furnished if necessary.

continued/ ...

Footnote [2] continued/ ...

However, it should be stated that our teacher evaluation was prefaced with the statement that "Hinds could spend it's money much more wisely than on teacher evaluations, which are nothing more than a tool that came into being with integration." The student appointed by Ms. Willis to "assist" with the evaluations had full access to the written evaluations and would not allow us to put our own evaluations into the envelope. She placed her hand on the envelope and said we "could either give the evaluation to her or Ms. Willis," but absolutely would not relinquish the envelope (nor remove her hand from it) to enable the students to place their evaluations privately within the envelope.

4. Poor time management. Three class periods were spent on one chapter, but not an expansion of material or continuation of a chapter from week to week — the whole chapter was covered one week, then the same coverage verbatum [sic] the next week, and (one can only presume that from lack of memory) the very same coverage the next week, starting at the beginning of the chapter again. Up to three class periods before final examination, we covered seven chapters of a 23-chapter book and in those final three class periods before final exam, the remaining 16 chapters were dumped on the class.

The students in this class are from varied backgrounds, of differing age groups, and both sexes; but we are adults who work hard for our money and hope to get the most for our dollar spent, who expect to be treated with the same respect as any other adult (whether student or not), and who are going to school at night out of a true desire to learn and to move ahead in life. Our sincere desire in advising the board of this situation is to, perhaps, remedy a situation for any future students in this class.

Sincerely,

spondent Board of Trustees, prompted Respondents to place Petitioner on probation and require her to submit to an "Individual Plan of Improvement" for the 1980-81 school year. (R. 228, 371, 185, P.3)

Prior to Respondent's decision to place Petitioner on probation and require her to submit to the "Individual Plan of Improvement," Respondents did not advise Petitioner of the existence of the December 11, 1979 letter, nor did they consult with Petitioner about any of the allegations contained in the letter. (R. 20, 22, 127, 180, 181, 225, 226, 271)

Evidence further revealed that only two other letters of complaint had been received by Respondent during Petitioner's tenure, one of which came from a student's parent, who complained that her child was depressed after attending Petitioner's class, and the other was from a student who complained about the subject of race being taught in the chapters being covered by Petitioner's sociology class. Both of these letters were received in 1976. Petitioner was advised of the existence of these two letters and consulted with her supervisors about them (R. 308)

Petitioner was not advised of any other written complaint against her prior to Respondents' decision to place Petitioner on probation and require her to submit to the "Individual Plan of Improvement." (R. 185)

During the five years in which Petitioner was employed by Respondents her class was observed only one time by her supervisor, that observation taking place during the 1976-77 school year. (R. 165, 166) Petitioner's supervisor's report of this observation was complimentary of Petitioner's teaching methods. (R. 165, 166, P.11)

Proof at trial also revealed that Respondent and President of Hinds Junior College, Dr. Clyde Muse, is of the opinion that an instructor who has had complaints lodged against him by students should be advised of the complaints and given an opportunity to respond. (R. 128)

The "Individual Plan of Improvement's" contents were based entirely on the complaints from students contained in their December 11, 1979 letter to the Board of Trustees. (P. 2,3) Respondent Dr. Clyde Muse approved the Plan after it had been completed and prior to Petitioner being advised of its existence.

Petitioner was not advised of the December 11, 1979 letter of complaints and its contents until a May 12, 1980 meeting between she and her supervisors, at which time she also for the first time was advised of the "Individual Plan of Improvement." (R. 20,22)

At the May 12, 1980 meeting with her supervisors, Petitioner refused to sign and agree to the terms and conditions of the "Individual Plan of Improvement" on the basis that she felt that to do so would be an admission to the truth of the allegations contained in the December 11, 1979 letter of complaint, since the letter and "Individual Plan of Improvement" parrot each other. (R. 258, 323)

Subsequent to the May 12, 1980 hearing Petitioner appealed the decision to place her on probation. Petitioner was granted a hearing on June 12, 1980. (R. 312)

At the June 12, 1980 hearing, Respondents offered as an example of the kinds of complaints they were receiving from students about Petitioner, a letter from a student named Jay Ferris, who alleged that he was going to get a "B" from Petitioner's class, when he deserved an "A." (R. 33, 290, P.6)

Prior to presenting the letter from Jay Ferris as evidence against Petitioner, Respondents made no effort to consult with Petitioner about the nature of the complaint, nor did they examine their records to determine if the student had in fact received a "B" instead of an "A." (R. 290, 291) Respondent's records showed that the student had received an "A" at the time the letter was offered as evidence against Petitioner. (R. 245, P.14)

Petitioner's immediate supervisor, Col. Frank K. Walsh, believed the student's allegations against Petitioner were true and did not feel the need to advise Petitioner of the complaint or ask her to respond to it. (R. 285)

Dr. Rabalais also presented a letter of complaint he stated that he had received from a student named Tim Gilmore. (R. 284, P.4) Gilmore complained that Petitioner had improperly deducted fifty (50) points from his paper. (R. 284) Dr. Rabalais made no effort to contact or consult with Petitioner concerning the truth of the allegations contained in the letter prior to presenting it as evidence against Petitioner. (R. 284) The record showed that Gilmore received the grade he deserved, a "79" (R. 287), and that Petitioner had not deducted fifty (50) points from his grade. (P. 5)

Respondent, Dr. Clyde Muse, the person who ordered that Petitioner be placed on probation and be required to submit to the "Individual Plan of Improvement," denied Petitioner's appeal and her stated grounds for the same, that she had not been given an opportunity to present her side prior to the decision to offer her a probationary contract, and to require her to submit to the "Individual Plan of Improvement." (R. 131)

The Respondent Board of Trustees denied by letter dated August 8, 1980, Petitioner's appeal to them, but modified the terms of the "Individual Plan of Improvement" to provide that Petitioner's success under the Plan would depend on the absence of a reasonable number of complaints (P. 9)

The Respondents, at the close of the 1980-81 school year did not renew Petitioner's contract for the 1981-82 school year because she refused to abide by the terms of the "Individual Plan of Improvement."

REASONS FOR GRANTING THE WRIT

(1) The Court below in its opinion denying the relief prayed for by Petitioner limited to areas of a showing of a protected property interest in continued employment to provisions in state statutes, local ordinances or express or implied contracts.

These limitations ignore the fact that there can be other areas which can trigger constitutional protections for a protect property interest.

The proposition that no such limitation should be endorsed by the Courts was recognized by the District Court in *Board of Regents v. Roth,* 310 F. Supp. 972, 446 F 2d 806, 408, U.S. 564, wherein the Court stated that:

> "... to expose him (an untenured professor) to non-retention because the deciding authority is utterly mistaken about a specific point of fact, such as whether a particular event occurred, is unjust. To expose him to non-retention on a basis wholly without reason, whether subtle or otherwise, is unjust. There can be no question that, in terms of money and standing and opportunity to contribute to the educational process, the consequences to him probably will be serious and prolonged and possibly will be severe and permanent. 'Badge of infamy' is too strong a term, but it is realistic to conclude that non-retention by one university or college creates concrete and practical difficulty for a professor in his subsequent academic career."

Likewise, the District Court in *Chase v. Fall Mountain Regional School District,* 330 F. Supp. 388, when faced with facts which revealed that an instructor's contract of employment had not been renewed on the basis of uninvestigated complaints and unverified rumors that he had made sexual advances towards female students, held that such a nonrenewal violated the teacher's right to due process, and further stated that:

> "... To dismiss a teacher on the basis of univestigated complaints and unverified rumors and to admit that the decision does not depend on the truth or falseness of the complaints and rumors is potently unjust, arbitrary, and capricious. If the possibility, let alone the probability of the truth of the facts involved is not known, a decison cannot be reasoned or based on substantial evidence. The implications

> of such a decision are frightening. It means that any student with a personal dislike to a teacher could bring his career to an end by a complaint wholly unjustified and unsubstantiated in fact. In the same sense, a malicious group in the community could start unsubstantiated rumors resulting in dismissal. Further, an administrator or another teacher bent on a personal vendetta could, by insidiously starting false rumors, bring about the dismissal of a totally innocent teacher."

With the lower Court's reasoning in the case *sub judice*, all of the horrors outlined by the Courts in *Chase* and *Roth, supra.*, have come to visit the Fourteenth Amendment Constitutional safeguards which should be due Petitioner.

This Court in *Board of Regents v. Roth, supra.*, also recognizes that there were other factors to consider other than state statutes, local ordinances or express or implied contracts in determining whether or not one has a protected propert interest in continued employment when it was indicated that the right of a due process hearing for non-renewal of contract would apply if the non-renewal of contract was based on a charge "that might seriously damage his standing and associations in his community," or a charge that placed upon him "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities."

Here, it is so clear as to warrant this Court taking judicial notice that the allegations contained in the December 11, 1979 letter and the collateral "Individual Plan of Improvement" would in and of themselves place a stigma on Petitioner as to her competency as a teacher and cause serious and irreparable damage to ner standing within the community.

Although the Court in *Board of Regents v. Roth, supra.* cited instances such as charges of dishonesty or immorality as being areas that might implicate interest in "liberty" so as to require a constitutional due process hearing, it can safely be argued that charges of incompetence and insubordination would also implicate interest in liberty and thereby trigger due process requirements. Here, charges of both incompetence and insubordination were lodged against Petitioner by the Respondents. *Birnbaum v. Trussell*, 371 F. 2d 672 and *Meredith v. Allen County War Memorial Hospital Comm'n*, 397 F. 2d 33.

The lower Court endorsed the finding of the trial Court that "nothing in Mississippi law, plaintiff's contract, or the policies, rules, guidelines or practices of defendants" created an expectancy of continued employment beyond the yearly contract period, and that absent such a showing no property interest could be claimed in the prospect of continued employment.

It is clear from the record that had Petitioner complied with the Respondents' "Individual Plan of Improvement" she would have been employed by Respondents for the 1980-81 school year. As such, Petitioner's only bar to continued employment was the terms and conditions of Respondents' "Individual Plan of Improvement." Thus if we start from the premise that the "Individual Plan of Improvement" itself was unconstitutionally implemented, then it must also be resolved that Petitioner had property interest which entitled her to constitutional due process protection prior to Respondents' decision to place her on probation and require her to submit to the requirements of the "Individual Plan of Improvement." *Perry v. Sindermann*, 408 U.S. 593 (1972)

The basic principal of the Due Process Clause of the Fourteenth Amendment is that no person shall be deprived of life, liberty or property without an opportunity to be heard, *Armstrong v. Mango*, 380 U.S. 545, (1965); *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, (1949). The guarantee that a party whose rights were affected must be given the opportunity to defend himself is based upon the most elementary concept of justice.

The key to an effective hearing is the opportunity of each party to know and meet the evidence and argument against him. Such a hearing represents the sole method of protecting against possible arbitrary, invidious or discriminatory action which would prejudice an individual's substantive right.

The following have traditionally been held essential prerequisites to meeting the requirements of minimum procedural due process:

> (1) the right to be advised of the cause or causes for denial of a right or privilege in sufficient detail to fairly enable one to show error that may exist.
>
> (2) the right to be advised of the names and the nature of the testimony of witnesses against him.
>
> (3) the right to be allowed a reasonable time after such advice to be heard in one's own defense. *Dixon v. Alabama State Board of Education*, 294 F. 2d 150 (5th Cir.) Cert. denied, 396 U.S. 930 (1961)

signals the end of these three minimum due process protections for teachers unprotected by state statutes, local ordinance or express contract, and who have suffered arbitrary and capricious termination or disciplinary action for alleged conduct which places a stigma or other disability on them.

Petitioner, as the only Black sociology instructor employed by Respondents was unconstitutionally singled out as a teacher who required special supervision because of the unverified complaints from students whose sensitivities were ruffled when confronted with subject matter that challenged their traditional community values. This categorization of Petitioner by Respondents imposed upon her a restraint and stigma greater than those imposed on other teachers in her department. Such action by Respondents violated Petitioner's rights secured by the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Trister v. University of Mississippi*, 420 F. 2d 499 (1969).

Under the well established laws and statutes of the State of Mississippi, the school authorities have broad discretion in determining whether to renew the contract of an instructor. Discretion has been interpreted by the Courts to mean judgment,

not bias or capriciousness. *Johnson v. Branch*, 364 F. 2d 177, cert. denied, 385 U.S. 1003 (1967). *Johnson, supra.* at 181, further held that such exercise of discretion "must be based on fact and supported by reasoned analysis."

Thus, it follows under the Fourteenth Amendment, that Respondents could not refuse to reemploy Petitioner for reasons not supported by substantial evidence. Here, Respondents acted not only without substantial evidence, but without any evidence at all that Petitioner had actually committed the acts complained of by the students in the December 11, 1979 letter.

(2) The lower Court found that the Respondents' "Individual Plan of Improvement" did not violate Petitioner's rights secured by the First Amendment to the United States Constitution.

The "Individual Plan of Improvement" by the Respondents' own admission was difficult to define. The Plan on its face was ambiguous and incapable of placing Petitioner on notice of the specific conduct which was proscribed.

This Court in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) held that:

> "When must guess what conduct or utterance may lose him his position, one necessarily will 'steer far wider of the unlawful zone'. . . The danger of that chilling effect upon the exercie of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed."

Likewise, Petitioner was faced with the possible chilling effects of the "Individual Plan of Improvement" or with prospect of losing her job for her failure to abide by its vague and general terms that left much to conjecture and specualtion.

In the District Court case of *Mailloux v. Kiley*, 323 F. Supp. 1387, the Court stated that a teacher in his capacity is engaged in the exercise of "vital First Amendment rights," and should not be forced to guess what speech may cost him his job.

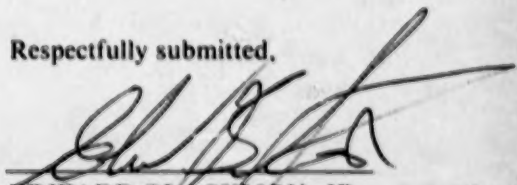
The logic of *Kiley, supra* has application here. The over vagueness of the Plan warranted Petitioner's refusal to surrender her First Amendment rights. Such a refusal by Petitioner should not have been found to be legitimate grounds for the non-renewal of her contract.

This Court should be cautious not to permit the dilution of protection afforded by the First Amendment. There is more than just an apparent danger here of erosion if the lower Court's decision is left standing.

CONCLUSION

This Court should grant the petition for certiorari and hear the issues raised in this important area of the First and Fourteenth Amendments.

Respectfully submitted,

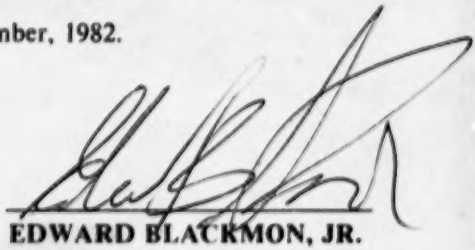


EDWARD BLACKMON, JR.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Edward Blackmon, Jr., attorney of record for the Petitioner in the above entitled action, hereby certify that I have this day mailed, postage prepaid, by United States Mail, three (3) true and correct copies of the foregoing Petition for Writ of Certiorari to the Honorable Ben J. Piazza, Donald C. Woods, KEYS, MOSS & PIAZZA, 213 South Lamar Street, Post Office Box 22845, Jackson, Mississippi 39205, attorneys for Respondents.

This the 28th day of December, 1982.



EDWARD BLACKMON, JR.

— APPENDIX A —

UNITED STATES DISTRICT COURT

Southern District of Mississippi

Jackson Division

Civil Action No. J81-0059(C)

SUSIE L. WILLIS

Plaintiff

VS.

CLYDE MUSE, PRESIDENT OF HINDS JUNIOR COLLEGE, et al

Defendants

JUDGMENT

This cause came on for hearing before the Court without intervention of the jury on September 9, 1981 in Jackson. A two day evidentiary hearing ensued. The plaintiff is an adult resident citizen of Hinds County, Mississippi. She was employed for the 1980-1981 school year as a sociology instructor at the college. She was first employed by the college in that capacity for the school year 1976-1977. Plaintiff filed her complaint on February 3, 1981 without being advised that complaints had been made against her by students and which plaintiff sensed as a violation of her substantive and due process rights under the Fifth and Fourteenth Amendments of the United States Constitution. She contended that her First Amendment rights under the Constitution were chilled and restrained as a result of a letter of May 2, 1980 from the defendant (Dr. Muse), who advised her that she would be

offered a probationary contract which plaintiff contends restrained and chilled those rights. She also contended that the act of the school administration in offering her a probationary contract constituted a tortuous interference with her rights to contract. This case involves no established reasons or grounds of race relationship. The plaintiff here sought a permanent injunction against the defendants to require them to offer her a non-probationary contract for the school year 1980-1981 and 1981-1982 and compensatory and punitive damages and attorney's fees. This Court finds and adjudicates that it has the full power and full authority to do all that is herein done.

The plaintiff, Susie L. Willis, was employed by the Board of Trustees of the school in August 1981 as a full time sociology instructor at Hinds Junior College. There was no express or implied system of tenure at Hinds Junior College and the plaintiff taught under a series of year to year contracts with the defendants.

During plaintiff's initial probationary year, her Division Chairman, Dr. John Matthews, and Department Chairman, Colonel Frank Walsh, conferred with the plaintiff on at least three occasions concerning **numerous complaints** that her teaching methods were **more appropriate for elementary students** rather than **a college level** course. These complaints included talking down to students, humiliating them in class in front of their peers, limiting students' freedom to ask appropriate questions, requiring students to respond by rote memory and requiring students to recite definitions in group rounds. Colonel Walsh and Dr. Matthews recommended that plaintiff not be offered a contract for the school year 1977-1978. Dr. Michael Rabalais, Academic Dean, was aware of the complaints against Mrs. Willis in 1976-1977 and had also counseled her concerning them. On receiving the non-renewal recommendations from her Department and Division Chairman, Dr. Rabalais brought them to the attention of Dr. Robert Mayo, President of Hinds Junior College. Rather than accepting the non-renewal recommendations, Dr. Mayo decided to recommend Mrs. Willis for renewal of her contract, but with an additional probationary year. This contract was accepted by Mrs. Willis.

Although a few complaints were received by the College in 1978 and 1979, plaintiff was offered, and accepted, non-probationary contracts for 1978-79 and 1979-80 school years.

During the 1979-80 school year, the administration again received complaints concerning plaintiff's instructional methods. These complaints were similar to and consistent with those previously received. Specifically, these complaints alleged that plaintiff talked down to students, humiliated them, taught on an elementary school level, had students recite definitions in "group rounds", suppressed student questions, used three class meetings to cover almost verbatim the same subject matter, required the students to read extensively from the text during class, and required the students to read in "group rounds".

In a letter dated December 11, 1979, addressed to the Board of Trustees, sixteen students in Mrs. Willis' sociology 2113 course made specific complaints against plaintiff's instructional methods. At least three of the students were of the black race. This letter was received by plaintiff's new Division Chairman, Mrs. Anne Hardy, who discussed this and other complaints concerning Mrs. Willis with Colonel Walsh.

The credible testimony in the trial of the cause substantiated as true all of the allegations of the December 11, 1979 letter.

On February 15, 1980 Colonel Walsh again recommended that Mrs. Willis' contract not be renewed. Mrs. Hardy forwarded this recommendation, with her concurrence to Dr. Rabalais.

Dr. Rabalais discussed the non-renewal recommendations with Dr. Clyde Muse, who on July 1, 1978 had succeeded Dr. Mayo as President of Hinds Junior College. After extensive discussion, Dr. Rabalais and Dr. Muse decided not to follow the non-renewal recommendation but rather to again offer Mrs. Willis a probationary contract without any increase in salary. The probationary contract was also to require a specific "Individual Plan of Improvement" in order to upgrade plaintiff's overall performance.

In the spring of 1980, Dr. Rabalais, Mrs. Hardy, and Colonel Walsh, drafted an Individual Plan of Improvement for Mrs. Willis which pointed out four specific areas requiring improvement, suggested means of action on these four areas, resources available to Mrs. Willis to assist her, and provided a method of evaluating her performance under the plan.

The Individual Plan of Improvement was given to plaintiff, in a conference on May 12, 1980, by Dr. Rabalais, Mrs. Hardy, and Colonel Walsh. Mrs. Willis was accompanied at this conference by members of her family and her attorney, Mr. Edward Blackmon. Plaintiff was also provided with a copy of the December 11, 1979 letter signed by her students and was advised that she could appeal the decision to offer her a probationary contract.

Plaintiff, through her attorney, requested such an appeal, and Dr. Muse appointed Dr. L. Conrad Welker, Jr., Vice President for Instructional and Community Affairs at Hinds to serve as Hearing Officer of the appeal. The hearing was held on June 12, 1980. Dr. Rabalais presented evidence in support of the decision to offer a probationary contract and plaintiff, represented by counsel, presented witnesses and her own testimony in opposition.

Dr. Welker subsequently submitted a written summary of the hearing with the recommendation that Mrs. Willis' appeal be denied. Plaintiff appealed this decision to the President of the College who affirmed the recommendation on July 21, 1980.

Plaintiff then filed a written appeal with defendant Board of Trustees and she and her attorney presented their appeal at the August 6, 1980 meeting of the Board.

On August 8, 1980, the President of the Board of Trustees, T.H. Kendall III, notified plaintiff that the Board upheld the administrative decision to offer plaintiff a probationary contract, with some modification of the Individual Plan of Improvement.

On or about August 21, 1980 Mrs. Willis signed and returned her probationary contract for the 1980-81 school year.

Testimony is uncontradicted that Mrs. Willis did not comply with the requirements of the Individual Plan of Improvement, during the 1980-81 school year. The school continued to receive student complaints concerning her teaching methods, she failed to take a "Teacher Effectiveness Training Course" required by the plan, even though she repeatedly advised verbally and in the plan, even thogu she was repeatedly advised verbally and in writing of the on-campus availability of such a course. Plaintiff failed to attend a meeting with her Department Chairman even though she had been directed specifically to attend such a meeting, without excuse. Plaintiff also violated the departmental sick leave call-in policy on January 26 and 27, 1981. Plaintiff testified she was ware of the policy. Plaintiff further refused to attend the March 16, 1981 conference required by the Plan of Improvement.

In the spring of 1981, Colonel Walsh and Mrs. Hardy again recommended that Mrs. Willis' contract not be renewed. Based upon her overall performance as a teacher at Hinds Junior College, the continued student complaints, her total failure to live up to the requirements of the Individual Plan of Improvement and her admitted insubordination, plaintiff was not offered a contract for the 1981-82 school year.

Mrs. Willis, through her attorney, requested and was granted a hearing on the administrative decision not to offer her a new contract. Dr. Muse designated Dr. Welker to serve as a Hearing Officer. The hearing was held on May 14, 1981. Dr. Rabalais, Mrs. Hardy and Colonel Walsh presented evidence in support of the administrative decision and Mrs. Willis and her attorney were present and were allowed to present documentary and testimentary evidence on her behalf. Dr. Welker confirmed the decision of non-renewal and a copy of his findings were provided to plaintiff in Dr. Muse's letter of June 22, 1981, in which Dr. Muse affirmed the decision of non-re-employment.

There is no evidence that plaintiff's contractual rights were interfered with or impaired by the defendants decision to offer plaintiff a probationary contract for the 1980-81 school year. No interruption of plaintiff's 1979-80 contract was either contemplated, suggested, or accomplished. Plaintiff was not under any

threat of termination during the 1979-80 year and her probationary contract for 1980-81 did not go into effect until after she had been given notice of and the reasons for the decision to offer her a probationary contract, and after she was given and availed herself of an opportunity for a full evidentiary hearing and an appeal to the Board of Trustees.

None of the defendants' policies, rules, guidelines or practices stated or implied any promise of continued employment beyond plaintiff's yearly contract period.

None of the defendants' policies, rules, guidelines or practices stated or implied that Mrs. Willis or any teacher at Hinds was entitled to be given a salary increase for additional years of experience, or additional education blocks earned during the year, or any "across the board" raises.

Plaintiff was also given notice of the recommendation for nonrenewal fir 1981-82 year and was given and availed herslef of an opportunity for full evidentiary hearing concerning the nonrenewal recommendation.

There is no evidence of racial bias or animosity on the part of any defendant against plaintiff. Nor is there any evidence that the recommendations that she be given a probationary contract or that her contract not be renewed, were racially motivated.

There is no evidence that Mrs. Willis' freedom of speech was abridged in any manner, or that any constitutionally protected conduct or activity of Mrs. Willis, played any part in the decisions to offer her a probationary contract or not to recommend her contract for renewal.

Plaintiff has alleged and sought to prove at the trial, alleged violations of her First and Fourteenth Amendment rights as protected by the Constitution of the United States and 42 U.S.C. Sections 1983 and 1985. Therefore in order to prevail plaintiff must establish that she has been deprived, "without due process of law" of either a protected "liberty" or "property" interests. The plaintiff has wholly failed to do so.

Plaintiff neither alleged in her complaint nor introduced any testimony at the trial to establish a protected "liberty" interest that was in any way effected by the defendants' offer of a probationary contract or non-renewal of her contract. To establish such an interest plaintiff would have had to show charges had been made against her which would seriously damage her standing or associations in the community or that a stigma or other disability had foreclosed her freedom to take advantage of present or future employment opportunities elsewhere.

The United States Supreme Court in *Board of Regents v. Roth*, 408 U.S. 564; 92 S. ct. 2701 and *Perry v. Sindermann*, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972) held that a property interest in employment, or a claim of entitlement to continued employment, was not created by the United States Constitution, but rather is created and its dimensions defined by State law, contract, or rules and regulations of the employer which imply an expectancy of continued employment. Nothing in Mississippi law, plaintiff's contract, or the policies, rules, guidelines or practices of defendants create such an expectancy of continued employment.

Since Mrs. Willis did not have such a "liberty" or "property" interest in receiving a non-probationary contract or in continued employment, defendants were under no requirement to provide her any "due process". *Jeffries v. Turkey Run Consolidated School District*, (7 CA) 492 F. 2d 1. Therefore, the adequacy of the reason or reasons for offering plaintiff a probationary contract, or not renewing her contract were a matter for the defendants to decide, and are not reviewable byy this Court under Constitutional principles. *Jeffries, supra;* see also *Stebbins v. Weaver*, (7 CA) 537 F. 2d 939, cert. denied, 97 S. Ct. 741 (1977); *Buhr v. Buffalo Pub. School District*, (8 CA) 509 F. 2d 1196.

Despite the fact that Mrs. Willis was not entitled to any due process considerations, defendants extended her numerous opportunities to appeal the decisions to offer her a probationary contract and to not renew her contract for the 1981-82 school year. In both instances, plaintiff received written notice of the

charges against her and was given and availed herself of the opportunity for a full evidentiary hearing, where she was represented by counsel, allowed to present witnesses and other testimony and to herself testify. The plaintiff received notice and had the hearings concerning the probationary contract prior to the expiration of her 1979-80 contract and before entering into her 1980-81 contract. The notice and hearing she received in 1981 were also prior to the end of that contractual year.

Plaintiff alleged in her complaint that Dr. Muse's letter of May 2, 1980 and the Individual Plan of Improvement restrained and chilled her rights to free expression. However, she wholly failed to offer any credible testimony in support of the allegation. On the contrary, the evidence is clear and convincing that no constitutionally protected conduct played any factor in the decisions to offer Mrs. Willis a probationary contract for 1980-81 and not to renew her contract for 1981-82.

There is no evidence that the decisions to offer Mrs. Willis a probationary contract or to not renew her contract were racially motivated, or based on any constitutionally protected conduct. Plaintiff's claim that her contract was tortiously interfered with by defendants is also wholly without merit. The administrators and Board of Trustees of Hinds Junior College were confronted with a teacher who did not in their opinion meet minimally accepted standards for teaching at their institution. Instead of terminating plaintiff at the earliest opportunity, defendants twice extended her probationary contracts, hoping that her performance would improve. Unfortunately, plaintiff did not avail herself of these opportunities, and in the face of her continued poor performance, and outright insubordination, defendants finally decided to not renew her contract. During the entire process, although they were not required to do so, the defendants afforded her more extensive procedural and substantive protections than constitutionally required.

Absent impermissable racial discrimination, First Amendment restraints, or due process violations, this Court does not constitute the appropriate form to review personnel decisions which constitute the daily administration of college affairs. Nor is

this Court required to review every potential administrative error in personnel decisions, even if one were made. The Fourteenth Amendment as it pertains to due process, does not act as a guarantor against every such administrative decisions. In *Bishop v. Wood*, 426 U.S. 341, 96 S Ct. 2074, the Court said:

> "The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitution cannot feasibly be construed to require federal judicial rebiew for every such error. In the absence of any claim that he public employer was motivated by a desire to curtail or to penalize the exercise of an employee's constitutionally protected rights, we must presume that official action was regular and, if erroneous, can best be corrected in other ways. The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions."

This Court finds as a fact and adjudges as a matter of law that the complaint of Mrs. Willis simply contains and her proof conclusively shows that there is and in truth and in fact no constitutional dimension of any contention made by her indeed, the fact that this contract lacked tenure does not in and of itself end the question, but the sworn testimony simply establishes to the complete satisfaction of this Court that there is no merit whatever anywhere to be found in the complaint of this plaintiff. The Trustees of this school accorded Mrs. Willis every constitutional right to which she was entitled, and indulged her, in her adamant ways to conduct her hearings before her classes in her own ways regardless of the wishes of her superiors in authority at the school. It is the firm judgment and conclusion of this Court that the complaint of Mrs. Willis in this case is without merit on all counts and is now finally dismissed with prejudice and she is assessed with all costs to be taxed by the Clerk of this Court for which proper process may issue.

ORDERED AND ADJUDGED this 30th day of September, 1981.

Harold Cox
UNITED STATES DISTRICT JUDGE

— APPENDIX B —

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 81-4460

Summary Calendar

SUSIE L. WILLIS,

Plaintiff- Appellant

versus

CLYDE MUSE, President of
Hinds Junior College, ET AL.,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Mississippi

(October 4, 1982)

Before Chief Judge CLARK, and POLITZ and HIGGINBOTHAM, Circuit Judges.

POLITZ, Circuit Judge:

Susie L. Willis, a black instructor of sociology, was employed by Hinds Junior College in Raymond, Mississippi, from 1976 until 1982, under a series of year-to-year contracts. The contract for 1980-81 was probationary, requiring Willis to meet the terms of an "Individual Plan of Improvement." Alleging that the probationary contract violated her first and fourteenth amendment

rights, Willis sought damages and an injunction to compel the offering of non-probationary contracts for 1980-81 and subsequent years.[1] The district court, after a bench trial, rejected Willis' claims. We affirm the district court in all respects.

Willis, with 33 years of teaching experience, encountered difficulties at the junior college from the outset. Midway through her first year, Willis' immediate superiors recommended against renewal of her employment contract because of the volume of student complaints about her teaching methods. The then president of Hinds renewed the contract for 1977-78 but continued the **probationary status.** The contract was renewed on a non-probationary basis for 1978-79 and 1979-80. In February 1980, the chairman of Willis' department again recommended non-renewal for the upcoming year. This was done because of student complaints. The new president of Hinds informed Willis that serious consideration had been given to termination of her employment but that he had determined to renew for 1980-81 on a probationary basis. The renewal was without increase in salary and subject to an "Individual Plan for Improvement." This plan spelled out four areas[2] in which Willis had to show improve-ment and specifically noted that unless improvement was shown, Willis would not be removed from probationary status and renewal of the contract would be placed in jeopardy.

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After suit was filed the time arrived for the offering of contracts for 1981-82. Willis was not offered a contract. She did not amend the complaint to include that development; however, at trial, evidence was presented by both sides, without objection. Under Fed.R.Civ.P.15(b), "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." The district court considered the non-hiring; we do likewise.

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The plan specified that Willis needed to improve her relationships with students, treat students as adults, manage her class time better and improve her student evaluation scores.

Willis appealed through the administrative procedures of the college, and the president of Hinds appointed the college's Vice-President for Instructional and Community Affairs as hearing officer. Willis was given a hearing at which, accompanied by counsel, she presented five student witnesses and her own statement. The students urged that no remedial action be taken against Willis. The Academic Dean of Hinds spoke of the reasons for offering only a probationary contract to Willis. The hearing officer found the actions of the president reasonable and denied Willis' appeal. Hinds' Board of Trustees upheld the decision. Willis signed the probationary contract.

In the spring of 1981 the college decided not to extend a contract for the 1981-82 year because of Willis' failure to comply with the Plan of Improvement and her failure to participate in various meetings with her supervisors. Again, a post-determination hearing was held, and the administrative decision was affirmed by the hearing officer and upheld by the college's president.

Procedural Due Process

Willis maintains that she was entitled to a pre-determination hearing on the decision to offer only a probationary contract for 1980-81 and no contract at all in 1981-82. **Due process requires a hearing before affecting a job-related interest in which the person has either a property or liberty interest.**

Property Interest

In order to establish a protected property interest, it was necessary for Willis to show that she had a right to continued employment **stemming from a state statute,** local ordinance or express or implied contract. *White v. Mississiippi State Oil and Gas Bd.*, 650 F. 2d 540, 541 (5th Cir. 1982) *(citing McElwee v. Todd*, 581 F. 2d 1182 (5th Cir. 1978)). *See Bishop v. Wood*, 426 U.S. 341 (1976); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972).

The district court found that "Nothing in Mississippi law, plaintiff's contract, or the policies, rules, guidelines or practices of defendants" created an expectancy of continued employment beyond the yearly contract period. The record supports this finding. Willis testified that she was not aware of any condition which would give rise to a protected property interest.[3]

Liberty Interest

"[T]he Constitution does not require opportunity for a hearing before the nonrenewal of a nontenured teacher's contract, unless he can show that the decision not to rehire him somehow deprived him of an interest in 'liberty' or that he had a 'property' interest in continued employment, despite the lack of tenure or a formal contract." *Perry v. Sindermann*, 408 U.S. at 599 *(citing Board of Regents v. Roth)*.

To establish a liberty interest sufficient to implicate the procedural protections of the fourteenth amendment, an individual must show stigmatism in connection with a right or status recognized under state law. *See Paul v. Davis*, 424 U.S. 693, 711-12 (1976); *Daly v. Sprague*, 675 F. 2d 716 (5th Cir. 1982); *Moore v. Otero*, 557 F.2d 435 (5th Cir. 1977).

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[3] Willis relies on the case of *Cantrell v. Vickers*, 495 F.Supp. 195 (N.D.Miss. 1980), for the proposition she had a property interest sufficient to require a predetermination hearing. In *Cantrell*, however, the district court found that the employee, a public school teacher, had a protected property interest in her position under Miss. Code Ann. §§ 37-9-101 to 37-9-113 (1979). That statute only applies to procedures to be used for providing public school employees with notice of the reasons for not offering renewal of an employment contract. Junior college employees are covered under Miss. Code Ann. § 37-29-63, which provides that the president of any junior college "may remove or suspend any member of the faculty subject to the approval of the trustees." That section establishes no property interest which would give rise to the right to a predetermination hearing. Similarly, Willis' reliance on *Duke v. North Texas State University*, 338 F.Supp. 990 (E.D. Tex. 1971), is misplaced because there the court found a legitimate expectancy of continued employment based upon an implied contract.

The district court found that Willis had not introduced any testimony to establish that her reputation was damaged or that the action of the college stigmatized her or foreclosed other employment opportunities.[4] This finding is fully supported by the record. Willis was not entitled, under the fourteenth amendment, to a predetermination hearing.

First Amendment Claims

Willis contends that under the terms of the "Individual Plan of Improvement," she was required either to surrender her rights under the first amendment or be removed from employment. First amendment concerns are not dependent upon the existence of a protected liberty or property interest. *Perry v. Sindermann*, 408 U.S. at 597; *Daly v. Sprague*, 675 F.2d at 728. To succeed on her first amendment claim, however, it was necessary for Willis to show that the decision not to renew her contract was "made in retaliation for [her] exercise of the constitutional right of free speech." *Perry v. Sindermann*, 408 U.S. at 598.

The district court found that there was "no evidence that Mrs. Willis' freedom of speech was abridged in any manner, or that any constitutionally protected conduct or activity . . . played any part in the decisions to offer her a probationary contract or not to recommend her contract for renewal." **Assuming without deciding that the Plan of Improvement may have implicated some constitutionally protected speech or conduct, there is no evidence in the record that the withholding of renewal of Willis' contract was done in retaliation for her noncompliance with those aspects of the Plan which may have infringed protected rights.** Other factors, some of which involved violation of the Plan and others which simply involved conduct the college found unacceptable, were offered in support of the college's decision. Willis failed to attend a Teacher Effectiveness Training Course, a departmental

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The only testimony in the record on this issue was elicited during the cross-examination of Willis. She was asked "Is it not true that the administration has made no threat, to your knowledge, to make a bad recommendation to any future employer that you may have?" She answered: "I have not asked, so I don't know what their reactions would be."

meeting and meetings with her supervisors. She also violated the department's sick leave policy. The evidence is overwhelming that the decision of the college not to renew Willis' contract was not made in retaliation of her exercise of the constitutionally protected rights of speech or any other protected activity.

Attorneys' Fees

Appellees' argument that they should be awarded attorney's fees under 42 U.S. § 2000e-5(k) is misplaced. That statute applies only to actions brought under 42 U.S.C. § 2000e *et seq.* The instant case is controlled by 42 U.S.C. § 1988. We do not believe that Willis' claim was so meritless as to justify imposition of the sanction of attorney's fees. *See Christianburg Garment Co. v. EEOC,* 434 U.S. 412 (1978).

The judgment of the district court is, in all respects, AFFIRMED.

—APPENDIX C —

CONFLICTING OPINION

Perry v. Sindermann, 408 U.S. 595.

Board of Regents v. Roth, 408 U.S. 564 (1972)

— APPENDIX D —

CERTIORARI JURISDICTION

Act of June 25, 1948, ch. 646, Pub. L. No. 773
62 Stat. 928 [28 U.S.C. § *1254*]

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after the rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

CIVIL RIGHTS JURISDICTION

Act of September 9, 1957, Pub. L. No. 85-315,
§ 121, 71 Stat. 637 [28 U.S.C. § 1343]

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

CIVIL RIGHTS ACT OF 1871

SECTION 1. Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13[42 U.S.C. § 1983]

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

RELIEF FROM JUDGMENT

Fed. R. Civ. P. Rule 60

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes: Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. §1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.